

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELINDA ELLIS

Claimant

VS.

T-MOBILE USA, INC.

Respondent

AND

KEMPER INSURANCE

Insurance Carrier

Docket No. 1,010,151

ORDER

Respondent and its insurance carrier request review of the June 13, 2003 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

The Administrative Law Judge (ALJ) determined claimant made a *prima facie* case she suffered work-related injuries to her upper extremities. The ALJ further determined claimant established just cause for extending the time for notice to 75 days and that claimant provided notice of accident within that time period. But the ALJ then designated Dr. Pedro Murati to conduct an independent medical examination for an opinion whether claimant had a repetitive use injury to her upper extremities and, if so, to provide an opinion on causation.

The respondent requests review of whether the ALJ erred in determining the claimant's injury arose out of and in the course of employment and whether timely notice was provided.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board finds this appeal should be dismissed.

At the conclusion of the preliminary hearing, the respondent argued that there was no evidence from a physician that claimant had a condition caused by her employment.

The ALJ made the following findings:

The Court finds the Claimant has made a *prima facie* case that she sustained injury to her upper extremities while in the course and scope of her employment with the Respondent. Based upon her testimony, the Court finds proper notice was given within the 75 days allotted for just cause, that just cause being the Claimant thought her condition would subside or disappear when she was no longer employed.

Dr. Pedro Murati shall perform an independent medical evaluation for an opinion as to whether or not the Claimant has a repetitive use injury to her upper extremities bilaterally and an opinion as to causation if any injury is found. In the event that Dr. Murati finds the Claimant has sustained an injury to her upper extremities either caused or contributed to by her employment, then Dr. Murati shall be the authorized treating physician for all treatment, tests and referrals, except referrals to rehabilitation hospitals. Any change to Dr. Murati's authorization must be approved by the Court. (Emphasis added)

Under K.S.A. 44-516 the ALJ is entitled to appoint independent physicians to evaluate claimants for various reasons. In this case, the ALJ ordered an independent medical examination for an opinion whether claimant had suffered an injury and, if so, an opinion on causation. In essence, the preliminary hearing is ongoing and the ALJ has not decided the issue respondent is appealing.

The ALJ's decision to have an independent medical examination performed on the claimant is interlocutory in nature and made during the litigation of a workers compensation case pending before the ALJ. This is not a final order that can be reviewed pursuant to K.S.A. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation. The Order now before the Board pertains to an interlocutory matter, ordering an independent medical examination, over which an ALJ has authority to order during the litigation of the case.

Because the Act specifically grants an ALJ the authority to appoint neutral health care providers to evaluate injured workers¹, the Judge did not exceed his jurisdiction and authority by ordering the evaluation.

The Board's jurisdiction to review appeals is governed by K.S.A. 44-534a and K.S.A. 44-551. Those statutes grant the Board the jurisdiction to review: (1) certain preliminary

¹ See K.S.A. 44-510e and K.S.A. 44-516.

hearing findings; and, (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

AWARD

WHEREFORE, the Board dismisses this appeal leaving the Order of Administrative Law Judge Jon L. Frobish dated June 13, 2003, in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of August 2003.

BOARD MEMBER

c: Thomas M. Warner, Jr., Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director